

United States Senate

WASHINGTON, DC 20510

December 6, 2017

The Honorable Ajit Pai
Chairman
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Dear Chairman Pai:

I write to express deep concerns with and opposition to your proposal to eliminate net neutrality rules. The Restoring Internet Freedom Order that the commission is expected to consider later this month would eliminate important consumer safeguards that protect a free and open internet. Particularly as we have seen increased consolidation among the nation's largest broadband providers, enactment of network neutrality rules was an important step toward making sure that consumers are protected when they connect to the online content of their choice. This has been echoed by the thousands of Missourians who have contacted my office in the past two weeks, as well as the overwhelming majority of the more than 443,000 Missourians who submitted public comments to the FCC on the issue earlier this year. Any effort to repeal these rules without putting alternative net neutrality safeguards in place is unacceptable.

The order's reliance on broadband providers to set their own policies regarding blocking, throttling, and prioritization, combined with an expectation that the Federal Trade Commission (FTC) will hold the companies accountable for abiding by those policies, is fundamentally flawed. Without requiring even the most basic baseline standards for net neutrality principles, the order effectively leaves the companies to regulate themselves, a model you and I both know does not work based on our work rooting out waste, fraud, and abuse in the Lifeline program. Although the FTC would be able to bring enforcement actions against at least some broadband providers for violating the policies the companies set, the fact that the FTC is responsible for policing nearly every sector of our economy leaves me skeptical that net neutrality enforcement would be a priority. With 35 percent more employees and a budget nearly 60 percent larger than the FTC's, the Federal *Communications* Commission – which Congress has specifically empowered to regulate interstate and international communications – is the appropriate agency to oversee and enforce net neutrality.

I am also concerned that in eliminating net neutrality rules the commission is abdicating its responsibility to protect consumers from other abusive practices by broadband providers in the future. As you are aware, for much of 2015 and 2016 as the Ranking Member on the Senate Permanent Subcommittee on Investigations, I worked with Senator Rob Portman on a bipartisan investigation into the customer service and billing practices of the nation's largest cable and satellite providers, most of which are also among the nation's largest providers of broadband service. Our investigation found almost all providers examined charged a host of fees that were not prominently displayed in advertised pricing, required customers wishing to cancel their

service to speak to “retention specialists” who were incentivized to not allow cancellations, and – in the case of two companies – overcharged consumers nationwide by millions of dollars without any system for tracking or refunding those charges. The commission has truth in billing rules in place for cable and phone companies, but none for broadband providers. Your order would seemingly eliminate the ability of the commission to ever adopt such rules.

Perhaps most troubling about the order is that it just furthers the unfortunate politicizing of this important policy issue. I have long said that Congress should settle the issue of net neutrality once and for all with legislation to provide certainty for consumers and providers alike. Until Congress can reach such an agreement, I urge you to abandon efforts to entirely eliminate net neutrality rules.

Sincerely,

A handwritten signature in blue ink, reading "Claire McCaskill". The signature is fluid and cursive, with the first name "Claire" starting with a large loop and the last name "McCaskill" following in a similar style.

Claire McCaskill
United States Senator



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

August 3, 2018

The Honorable Claire McCaskill
United States Senate
730 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator McCaskill:

Thank you for your letter regarding the *Restoring Internet Freedom Order*, which reestablished the authority of the Federal Trade Commission to oversee the network management practices of Internet service providers while returning to the light-touch legal framework that governed such practices for almost twenty years.

At the dawn of the commercial Internet in 1996, President Clinton and a Republican Congress agreed that it would be the policy of the United States “to preserve the vibrant and competitive free market that presently exists for the Internet . . . unfettered by Federal or State regulation.” This bipartisan policy worked. Encouraged by light-touch regulation, the private sector invested over \$1.5 trillion to build fixed and mobile networks throughout the United States. Innovators and entrepreneurs grew startups into global giants. America’s Internet economy became the envy of the world.

Then, in early 2015, the FCC jettisoned this successful, bipartisan approach to the Internet and decided to subject the Internet to utility-style regulation designed in the 1930s to govern Ma Bell. This decision was a mistake. For one thing, there was no problem to solve. The Internet wasn’t broken in 2015. We weren’t living in a digital dystopia. To the contrary, the Internet had been a stunning success.

Not only was there no problem, this “solution” didn’t work. The main complaint consumers have about the Internet is not and has never been that their Internet service provider is blocking access to content. It’s that they don’t have access at all or enough competition between providers. The 2015 regulations took us in the opposite direction from these consumer preferences. Under Title II, annual investment in high-speed networks declined by billions of dollars—the first time that such investment has gone down outside of a recession in the Internet era. And our recent Broadband Deployment Report shows that the pace of both fixed and mobile broadband deployment declined dramatically in the two years following the *Title II Order*.

Quite to the contrary of some predictions, returning to the legal framework that governed the Internet from President Clinton’s pronouncement in 1996 until 2015 has not destroyed and will not destroy the Internet. It has not ended and will not end the Internet as we know it. It has not undermined and will not undermine the free exchange of ideas or the fundamental truth that the Internet is the greatest free market success story of our lifetimes.

By returning to the light-touch Title I framework, we are helping consumers and promoting competition. Broadband providers will have stronger incentives to build networks, especially in unserved or hard-to-serve areas like Ozark and West Plains, Missouri (each which I visited last year), and to upgrade networks to gigabit speeds and 5G. This means there will be more competition among broadband providers. It also means more ways that companies of all kinds and sizes can deliver applications and content to more users. In short, it's a freer and more open Internet.

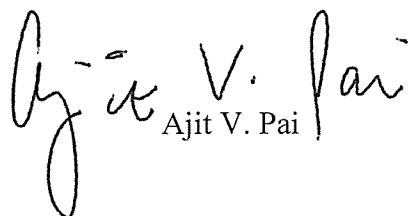
The *Restoring Internet Freedom Order* also promotes more robust transparency among ISPs than existed three years ago. It requires ISPs to disclose a variety of business practices, and the failure to do so subjects them to enforcement action. This transparency rule will ensure that consumers know what they're buying and that startups get information they need as they develop new products and services.

Moreover, we reestablish the Federal Trade Commission's authority to ensure that consumers and competition are protected. Two years ago, the *Title II Order* stripped the FTC of its jurisdiction over broadband providers by deeming them all Title II "common carriers." But now we are putting our nation's premier consumer protection cop back on the beat. The FTC has regularly addressed the kinds of anticompetitive behaviors that concern advocates of net neutrality—and indeed the FTC's authority to police unfair and deceptive trade practices like overcharging consumers is greater than the Commission's own narrow authority. FTC Chairman Joseph Simons has made clear that the agency has the "resources and capability" to exercise this authority and that it will in fact do so. In addition, the FCC and FTC have entered into a Memorandum of Understanding to ensure cooperation between our agencies, and I have personally spoken to Chairman Simons several times to underscore this commitment. Additionally, as you recognize in your letter, the Commission's truth-in-billing rules did not apply to Internet service providers, and returning jurisdiction to the FTC will ensure that consumers across America are protected from unfair and deceptive billing practices.

In sum, Americans will still be able to access the websites they want to visit. They will still be able to enjoy the services they want to enjoy. There will still be regulation and regulators guarding a free and open Internet. This is the way things were prior to 2015, and this is the way they will be in the future.

I appreciate your interest in this matter. Please let me know if I can be of any further assistance.

Sincerely,



Ajit V. Pai